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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/975,162      | 10/11/2001  | Nicolo F. Machi      | 055-00-002          | 9108             |

7590

07/16/2003

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EXAMINER

NGUYEN, PHILLIP

ART UNIT

PAPER NUMBER

2828

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/975,162

Applicant(s)

MACHI ET AL.

Examiner

Phillip Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.



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**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1 and 6, it has been held that the recitation that an element is "adapted to" perform a function is not positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPT 138.

Claims 1 and 6 recite "a housing; two or more Laser infrared diodes arranged inside said housing" which is not clear whether the heatsink and any other element is arranged inside of the housing. The claims fail to define means plus function because each means can only has a function while there are at least two function for optical transmitting means and combining means.

Claim 3 recites "said control means" which is lack of antecedence basis. It is recommended that the applicant should use the term --controlling means for controlling-- instead of "means for controlling" in order to overcome the U.S.C 112, 2<sup>nd</sup> paragraph issue.

*Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Baird et al. ('447).

With respect to claim 1, Baird discloses in Figure 1 a high intensity infrared light comprising a housing 20; two or more laser infrared diodes 14 arranged inside said housing; means comprising a heat sink 22 for receiving heat from the laser diodes; means for collecting and transmitting light 68/70/72 from said laser diodes; means for receiving 16 and combining the infrared from said optical transmitting means into a single beam of infrared light and to reradiate the beam of light from a light emitting surface; and an aspheric lens 102 situated such that the focal plane of said aspheric lens is placed at the light emitting surface of said combining means.

With respect to claim 2, Baird further discloses a means for controlling the electrical power 12 applied to said laser diodes.

With respect to claim 3, Baird discloses the "control means" is located remotely from said housing.

With respect to claim 4, Baird discloses mounting points in the housing (col. 11, lines 2-5; col. 12, lines 43-47).

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With respect to claim 6, Baird discloses the claimed invention as recited in claim 1 and claim 4.

Claims 7-14 further disclose processes for providing the high intensity infrared light. Since Baird discloses the product, it is inherent product by process for performing the methods as recited in the claims.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baird et al. ('447) in view of Palmer et al. ('435). Baird discloses the claimed invention except for a conical reflector. Palmer discloses a conical reflector. For the improvement of the infrared light system, it would have been obvious to the one having ordinary skill in the art at the time the invention was made to provide a conical reflector between the aspheric lens and combining means in order to collect more light emitted by the infrared laser diodes as taught by Palmer.

*Citation of Pertinent References*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patent to Baird et al. discloses High-Power,        Laser, U.S. Patent No. 5317447

The patent to Palmer et al. discloses Flashlight        Device, U.S. Patent No. 5595435

*Communication Information*

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Nguyen whose telephone number is 703-305-4966. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip, can be reached on (703) 308-3098. The fax phone numbers for the organization where this application or proceeding is assigned are:

TC2800 Official Before-Final RightFAX - (703) 872-9318

TC2800 Official After-Final RightFAX - (703) 872-9319

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0658.

July 8th, 2003

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